

ASSEMBLY BILL

No. 2459

Introduced by Assembly Member Conway

February 21, 2014

An act to amend Section 368 of the Penal Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2459, as introduced, Conway. Elder abuse.

Under existing law, a person who is a caretaker of an elder or dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or specified identify theft provisions of law, is subject to a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950.

This bill would make technical, nonsubstantive changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 368 of the Penal Code is amended to
2 read:

3 368. (a) The Legislature finds and declares that crimes against
4 elders and dependent adults are deserving of special consideration
5 and protection, not unlike the special protections provided for
6 minor children, because elders and dependent adults may be

1 confused, on various medications, mentally or physically impaired,
2 or incompetent, and therefore less able to protect themselves, to
3 understand or report criminal conduct, or to testify in court
4 proceedings on their own behalf.

5 (b) (1) ~~Any~~ A person who knows or reasonably should know
6 that a person is an elder or dependent adult and who, under
7 circumstances or conditions likely to produce great bodily harm
8 or death, willfully causes or permits any elder or dependent adult
9 to suffer, or inflicts thereon unjustifiable physical pain or mental
10 suffering, or having the care or custody of any elder or dependent
11 adult, willfully causes or permits the person or health of the elder
12 or dependent adult to be injured, or willfully causes or permits the
13 elder or dependent adult to be placed in a situation in which his or
14 her person or health is endangered, is punishable by imprisonment
15 in a county jail not exceeding one year, or by a fine not to exceed
16 six thousand dollars (\$6,000), or by both that fine and
17 imprisonment, or by imprisonment in the state prison for two,
18 three, or four years.

19 (2) If in the commission of an offense described in paragraph
20 (1), the victim suffers great bodily injury, as defined in Section
21 12022.7, the defendant shall receive an additional term in the state
22 prison as follows:

23 (A) Three years if the victim is under 70 years of age.

24 (B) Five years if the victim is 70 years of age or older.

25 (3) If in the commission of an offense described in paragraph
26 (1), the defendant proximately causes the death of the victim, the
27 defendant shall receive an additional term in the state prison as
28 follows:

29 (A) Five years if the victim is under 70 years of age.

30 (B) Seven years if the victim is 70 years of age or older.

31 (c) ~~Any~~ A person who knows or reasonably should know that
32 a person is an elder or dependent adult and who, under
33 circumstances or conditions other than those likely to produce
34 great bodily harm or death, willfully causes or permits ~~any~~ an elder
35 or dependent adult to suffer, or inflicts thereon unjustifiable
36 physical pain or mental suffering, or having the care or custody
37 of ~~any~~ an elder or dependent adult, willfully causes or permits the
38 person or health of the elder or dependent adult to be injured or
39 willfully causes or permits the elder or dependent adult to be placed
40 in a situation in which his or her person or health may be

1 endangered, is guilty of a misdemeanor. A second or subsequent
2 violation of this subdivision is punishable by a fine not to exceed
3 two thousand dollars (\$2,000), or by imprisonment in a county jail
4 not to exceed one year, or by both that fine and imprisonment.

5 (d) ~~Any~~ A person who is not a caretaker who violates any
6 provision of law proscribing theft, embezzlement, forgery, or fraud,
7 or who violates Section 530.5 proscribing identity theft, with
8 respect to the property or personal identifying information of an
9 elder or a dependent adult, and who knows or reasonably should
10 know that the victim is an elder or a dependent adult, is punishable
11 as follows:

12 (1) By a fine not exceeding two thousand five hundred dollars
13 (\$2,500), or by imprisonment in a county jail not exceeding one
14 year, or by both that fine and imprisonment, or by a fine not
15 exceeding ten thousand dollars (\$10,000), or by imprisonment
16 pursuant to subdivision (h) of Section 1170 for two, three, or four
17 years, or by both that fine and imprisonment, when the moneys,
18 labor, goods, services, or real or personal property taken or obtained
19 is of a value exceeding nine hundred fifty dollars (\$950).

20 (2) By a fine not exceeding one thousand dollars (\$1,000), by
21 imprisonment in a county jail not exceeding one year, or by both
22 that fine and imprisonment, when the moneys, labor, goods,
23 services, or real or personal property taken or obtained is of a value
24 not exceeding nine hundred fifty dollars (\$950).

25 (e) ~~Any~~ A caretaker of an elder or a dependent adult who violates
26 any provision of law proscribing theft, embezzlement, forgery, or
27 fraud, or who violates Section 530.5 proscribing identity theft,
28 with respect to the property or personal identifying information of
29 that elder or dependent adult, is punishable as follows:

30 (1) By a fine not exceeding two thousand five hundred dollars
31 (\$2,500), or by imprisonment in a county jail not exceeding one
32 year, or by both that fine and imprisonment, or by a fine not
33 exceeding ten thousand dollars (\$10,000), or by imprisonment
34 pursuant to subdivision (h) of Section 1170 for two, three, or four
35 years, or by both that fine and imprisonment, when the moneys,
36 labor, goods, services, or real or personal property taken or obtained
37 is of a value exceeding nine hundred fifty dollars (\$950).

38 (2) By a fine not exceeding one thousand dollars (\$1,000), by
39 imprisonment in a county jail not exceeding one year, or by both
40 that fine and imprisonment, when the moneys, labor, goods,

1 services, or real or personal property taken or obtained is of a value
2 not exceeding nine hundred fifty dollars (\$950).

3 (f) ~~Any~~ A person who commits the false imprisonment of an
4 elder or a dependent adult by the use of violence, menace, fraud,
5 or deceit is punishable by imprisonment pursuant to subdivision
6 (h) of Section 1170 for two, three, or four years.

7 (g) As used in this section, “elder” means ~~any~~ a person who is
8 65 years of age or older.

9 (h) As used in this section, “dependent adult” means ~~any~~ a
10 person who is between the ages of 18 and 64, who has physical or
11 mental limitations ~~which~~ *that* restrict his or her ability to carry out
12 normal activities or to protect his or her rights, including, but not
13 limited to, persons who have physical or developmental disabilities
14 or whose physical or mental abilities have diminished because of
15 age. “Dependent adult” includes ~~any~~ a person between the ages
16 of 18 and 64 who is admitted as an inpatient to a 24-hour health
17 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
18 Health and Safety Code.

19 (i) As used in this section, “caretaker” means ~~any~~ a person who
20 has the care, custody, or control of, or who stands in a position of
21 trust with, an elder or a dependent adult.

22 (j) Nothing in this section shall preclude prosecution under both
23 this section and Section 187, or 12022.7, or any other ~~provision~~
24 ~~of~~ law. However, a person shall not receive an additional term of
25 imprisonment under both paragraphs (2) and (3) of subdivision
26 (b) for any single offense, nor shall a person receive an additional
27 term of imprisonment under both Section 12022.7 and paragraph
28 (2) or (3) of subdivision (b) for any single offense.

29 (k) In any case in which a person is convicted of violating these
30 provisions, the court may require him or her to receive appropriate
31 counseling as a condition of probation. ~~Any~~ A defendant ordered
32 to be placed in a counseling program shall be responsible for
33 paying the expense of his or her participation in the counseling
34 program as determined by the court. The court shall take into
35 consideration the ability of the defendant to pay, and no defendant
36 shall be denied probation because of his or her inability to pay.